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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

SILVER STATE BROADCASTING, LLC,

- ☐ Affects Silver State Broadcasting, LLC
☐ Affects Golden State Broadcasting, LLC
☐ Affects Major Market Radio, LLC
☒ Affects all Debtors

Case No. BK-21-14978-abl

Jointly Administered with:
Case No. BK-S-21-14979-abl
Case No. BK-S-21-14980-abl

Chapter 11

**RECEIVER'S OPPOSITION TO
APPLICATION FOR ORDER
AUTHORING JOINTLY
ADMINISTERED DEBTORS TO
EMPLOY BANKRUPTCY ATTORNEYS
UNDER A GENERAL RETAINER
[HARRIS LAW PRACTICE LLC]**

Hearing Date: January 5, 2022
Hearing Time: 1:30 p.m.

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W. Lawrence Patrick (the “Receiver”), the receiver of substantially all of the assets of the above-captioned the debtors and debtors-in-possession (collectively, the “Debtors”),¹ hereby files this opposition (the “Opposition”) to the *Application for Order Authorizing Jointly Administered Debtors to Employ Bankruptcy Attorneys Under a General Retainer [Harris Law Practice LLC]* [Docket No. 41] (the “Application”) filed by the Debtors. In support of the Opposition, the Receiver references the *Declaration of Proposed Attorney to Be Employed by Jointly Administered Debtors [Harris Law Practice]* [Docket No 42] (the “Harris Declaration”), the papers and pleadings on file with the Court, and respectfully states as follows:

I.

INTRODUCTION²

The Debtors admit that Harris Law holds a prepetition claim against both the Debtors and their principal and ultimate equity holder—Mr. Stolz. The Compensation Disclosure represents that Harris Law received \$4,000 prepetition from each Debtor for preparation of the Debtors’ Bankruptcy Cases and lists the outstanding balance of prepetition fees as “unknown.” However, the SOFA (filed the same day) admits that the outstanding balance owing to Harris Law is \$16,000 for each Debtor. Rather than write-off the outstanding balance for prepetition services, Harris Law obtained (with respect to each Debtor) a “[p]romise to pay \$16,000 when Co-Manager Ed Stolz’[s], house(s) sell” in addition to the \$12,000 prepetition cash payments. As a result, Harris Law not disinterested because the deal renders Harris Law both a prepetition creditor of the Debtors and materially adverse to the Debtors’ principal and ultimate equity holder. Moreover, the Debtors’ boilerplate Application and the supporting Harris Declaration do not provide full disclosure of the deal. Accordingly, as set

¹ The Debtors are Silver State Broadcasting, LLC (“Silver State”), Golden State Broadcasting, LLC (“Golden State”), and Major Market Radio, LLC (“Major Market”). Unless otherwise set forth herein, all “Docket” references are to the docket of the Silver State Bankruptcy Case. The docket of the Golden State Bankruptcy Case is referred to herein as the “Golden State Docket” and the docket of the Major Market Bankruptcy Case is referred to herein as the “Major Market Docket.” To the extent applicable, the Receiver respectfully requests that the Court take judicial notice of the filings on the dockets of the Bankruptcy Cases, pursuant to Rule 201(b) of the Federal Rules of Evidence.

² Unless otherwise defined herein, the capitalize terms used in this Introduction have the definitions set forth elsewhere in this Opposition.

1 forth more fully below, the Application must be denied because Harris Law cannot satisfy the
2 disinterestedness requirements necessary for employment by the Debtors' estates.

3 II.

4 STATEMENT OF FACTS

5 **A. General Background**

6 1. On October 19, 2021 (the "Petition Date"), the Debtors filed voluntary petitions
7 [Docket No. 1] (the "Petitions") for relief under chapter 11 of title 11 of the United States Code (the
8 "Bankruptcy Code")³ with the United States Bankruptcy Court for the District of Nevada (the
9 "Court"), which initiated the above-captioned chapter 11 bankruptcy cases (the "Bankruptcy Cases").
10 To date, no official committee or examiner has been appointed by the Office of the United States
11 Trustee in these Bankruptcy Cases.

12 2. On November 4, 2021, the Debtors filed motions to jointly administer the above-
13 captioned cases. *See, e.g.*, Docket No. 14. On November 19, 2021, the Court entered an order
14 [Docket No. 37] granting joint administration of the Bankruptcy Cases.

15 3. On November 19, 2021, the Debtors filed the Application. The Application seeks,
16 *inter alia*, an order employing the Harris Law Practice LLC ("Harris Law") as bankruptcy counsel
17 for the Debtors' estates, pursuant to § 327(a).

18 **B. The Employment and Compensation Disclosures**

19 4. The Debtors' disclosures concerning their prepetition and postpetition compensation
20 agreements with Harris Law raise serious concerns. On November 15, 2021, the Debtors filed the
21 *Disclosure of Compensation for Attorney for Debtor(s)* [Docket No. 28] (the "Compensation
22 Disclosure"). *See also* Golden State Docket No. 31; Major Market Docket No. 29. As set forth more
23 fully in the Compensation Disclosure, Harris Law received \$4,000 prepetition for "Actual
24 Fees/Costs." However, the Compensation Disclosure omits whether Harris Law held any outstanding
25 prepetition claim against the Debtors on account of actual prepetition fees and costs—the Debtors
26 only provide that there was an "unknown" balance owing to Harris Law prepetition. *See id.*

27
28 ³ Unless otherwise set forth herein, all references to "Section" and "§" are to sections of the Bankruptcy Code.

5. The Debtors' additional filings confirm that Harris Law holds a prepetition claim against the Debtors. On November 15, 2021, the Debtors filed the *Statement of Financial Affairs of Non-Individuals Filing for Bankruptcy* [Docket No. 28] (the "SOFA"). *See also* Golden State Docket No. 31; Major Market Docket No. 29. The SOFA confirms that Harris Law received \$4,000 from each Debtor for prepetition services *in addition to* a "[p]romise to pay \$16,000 when Co-Manager Ed Stolz'[s], house(s) sell" on account of the outstanding \$48,000 owing from the Debtors. SOFA, § 11.1 at 3. Conflictingly, by comparison to the Compensation Disclosure, the SOFA indicates that Stephen R. Harris ("Mr. Harris"), individually, received the \$12,000 prepetition payments and the prepetition interest in Mr. Stolz's houses. *See id.*

6. The Harris Declaration in support of the Application departs markedly from the Debtors' disclosures. The *pro forma* Harris Declaration simply provides that "[n]either I, nor the firm of HARRIS LAW PRACTICE, LLC, or any member or associate thereof, insofar as I have been able to ascertain, represent any interest adverse to that of the Debtors' estates." Harris Decl., ¶ 3 at 2. As set forth more fully below, Harris Law's apparent outstanding prepetition claim against the Debtors and Mr. Harris's admitted interest in the sale of real property owned by the Debtors' co-manager and ultimate equity holder, Mr. Stolz, renders the employment of Harris Law irreconcilably at odds with the requirements of § 327(a).

III.

ARGUMENT

A. The Standards Applicable to the Employment of Estate Professionals Require That Such Professionals Do Not Hold an Interest Adverse to the Estate and Are Disinterested.

Section 327 of the Bankruptcy Code provides in pertinent part as follows:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

See 11 U.S.C. § 327(a).

The Bankruptcy Code imposes significant restrictions on professionals who are employed or

1 compensated by a bankruptcy estate so as to prevent professionals from representing interests
 2 adverse to the estate. The overarching goals of these restrictions are to ensure undivided loyalty to the
 3 estate and to preserve public confidence in the fairness of the bankruptcy system. *In re Sundance Self*
 4 *Storage-El Dorado LP*, 482 B.R. 613, 624-625 (Bankr. E.D. Cal. 2012). “[T]he [debtor-in-
 5 possession], with the court’s approval, may employ one or more attorneys . . . that do not hold or
 6 represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the
 7 [debtor-in-possession] in carrying out the [debtor-in-possession]’s duties under this title.” 11 U.S.C.
 8 §§ 327(a) and 1107(a); *see also DeRonde v. Shirlely (In re Shirley)*, 134 B.R. 940, 943 (B.A.P. 9th
 9 Cir. 1992) (holding that Section 327 “is made equally applicable to a debtor in possession as it is to
 10 a trustee by § 1107(a)”). A professional in a chapter 11 estate may remain disinterested if it holds a
 11 prepetition claim solely based on services rendered to the debtor; however, holding a prepetition claim
 12 and another adverse relationship to the estate supports a finding the professional is not disinterested.
 13 *See, e.g., In re Essential Therapeutics, Inc.*, 295 B.R. 203, 207-208 (Bankr. D. Del. 2003) (“[S]ection
 14 1107(b) must be narrowly construed and is not meant to eliminate all the specific tests for
 15 disqualification enumerated in section 101(14) *except* the mere fact of prior employment or retention.
 16 In this case, the disqualification is not simply because Bingham served as counsel to the Debtors pre-
 17 petition, it is because Mr. Vega also served as an officer of the Debtors within two years of the
 18 petition.”) (emphasis in original).

19 The term “disinterested person” is defined in the Bankruptcy Code to include one who is not
 20 a creditor and “does not have an interest materially adverse to the interest of the estate or of any class
 21 of creditors or equity security holders, by reason of any direct or indirect relationship to,
 22 connection with, or interest in, the debtor, or for any other reason.” 11 U.S.C. §101(14)(A) & (C). A
 23 person who is disinterested is one that can make unbiased decisions, free from personal interest, in
 24 any matter pertaining to the debtor's estate. *Shat v Kistler (In re Shat)*, 2009 WL 7809004, at *6
 25 (B.A.P. 9th Cir. 2009). The phrase to “hold or represent an interest adverse to the estate” has been
 26 given meaning by case law. A generally accepted definition of “adverse interest” is the (1) possession
 27 or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or
 28 (2) possession or assertion of an economic interest that would create either an actual or potential

dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate. *Dye v. Brown (In re AFI Holding, Inc.) (AFI Holding I)*, 355 18 B.R. 139, 148-49 (B.A.P. 9th Cir. 2006); *see also In re Martin*, 817 F.2d 175, 180 (1st Cir. 1987) (stating that a bankruptcy court must inquire whether the connection created “either a meaningful incentive to act contrary to the best interests of the estate and its sundry creditors-an incentive sufficient to place those parties at more than acceptable risk-or the reasonable perception of one”).

In the Ninth Circuit, “[t]o represent an adverse interest means to serve as an attorney for an entity holding such an adverse interest. For the purposes of disinterestedness, a lawyer has an interest materially adverse to the interest of the estate if the lawyer either holds or represents such an interest.” *Tevis v. Wilke, Fleury, Holffelt, Gould & Birney, LLP (In re Tevis)* 347 B.R. 679, 688 (B.A.P. 9th Cir. 2006) (citations omitted). The “adverse interest” language under § 327(a) and the “material adverse interest” prong of the “disinterested person” definition under § 101(14)(C) “telescope into what amounts to a single hallmark.” *In re Martin*, 817 F.2d at 180. This unitary hallmark is designed to filter out conflicts that may jeopardize a fair and equitable administration of the bankruptcy estate. *In re Sundance Self Storage -El Dorado LP*, 482 B.R. 613, 626 (Bankr. E.D Cal. 2012).

A conflict need not be actual to be disqualifying. “An actual conflict mandates disqualification of a professional to serve in a bankruptcy case. A potential conflict also provides sufficient grounds for a court to deny a professional's employment.” *Shat*, 2009 WL 7809004 at *6 (citation omitted); *see also In re B.E.S. Concrete Prods., Inc.*, 93 B.R. 228, 236 (Bankr. E.D. Cal. 1988) (“Appearances count. Even conflicts more theoretical than real will be scrutinized.”)

B. Harris Law Is Not Disinterested Because It Is A Prepetition Creditor of the Debtors and Holds an Interest Materially Adverse to the Debtors’ Co-Manager and Ultimate Equity Holder..

The Debtors’ disclosures demonstrate that Harris Law is not eligible for employment by the Debtors’ estates. The Debtors admit that Harris Law performed \$48,000 of prepetition work on behalf of the Debtors for which Harris Law has not been compensated. *See* SOFA, § 11.1 at 3; *see also* Appl. at 3. As a result of this arrangement, Harris Law holds a claim against the Debtors’ estates and

1 is a creditor. *See* 11 U.S.C. § 101(5)(A), (10)(A); *see also In re Carter*, 116 B.R. 123, 125-126 (E.D.
 2 Wis. 1990). The analysis does not change simply because Mr. Stolz has agreed to pay for the Debtors’
 3 prepetition debt to Harris Law—the debt remains a liability of the Debtors as of the Petition Date.
 4 Further, Harris Law is not disinterested because it holds a claim against Mr. Stolz—namely the right
 5 to obtain payment from the sale of Mr. Stolz’s house or houses. *See Shat v Kistler (In re Shat)*, 2009
 6 WL 7809004, at *6 (B.A.P. 9th Cir. 2009) (holding that a person who is disinterested is one that can
 7 make unbiased decisions, free from personal interest, in any matter pertaining to the debtor’s estate).
 8 Mr. Stolz is both the co-manager of the Debtors and the Debtors’ ultimate equity holder. Given Mr.
 9 Stolz is the sole control person of the Debtors, Harris Law’s interest in the sale of Mr. Stolz’s house
 10 presents a clear interest adverse to the Debtors by virtue of his direct creditor relationship and indirect
 11 interest in the personal assets of Mr. Stolz.

12 Importantly, the Application and Harris Declaration do not provide forthright disclosure of
 13 these disqualifying interests. Full disclosure is an essential prerequisite for both employment and
 14 compensation. *Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d
 15 877, 881 (9th Cir. 1995). A professional has a duty to make full, candid and complete disclosure of
 16 all facts concerning his transactions with the debtor, and must disclose all connections with the debtor,
 17 creditors, and parties in interest, no matter how irrelevant or trivial those connections may seem.
 18 *Mehdipour v. Marcus & Millichap (In re Mehdi pour)*, 202 B.R. 474, 480 (B.A.P. 9th Cir. 1996).
 19 Failure to disclose relevant information is relevant to the disqualification analysis. *See Shat*, 2009
 20 WL 7809004, at *10 (“[W]hile the bankruptcy court eventually got the facts, and many not until the
 21 employment hearing, withholding disclosures to the court until forced to do so in response to the
 22 UST’s opposition is not stellar conduct of a bankruptcy attorney.”). As discussed, above, the Harris
 23 Declaration offers only boilerplate allegations and assertions that Harris Law and Mr. Harris are
 24 disinterested and makes no effort to disclose the outstanding \$48,000 prepetition claim, the interest
 25 in the sale of Mr. Stolz’s houses, or their impact on Harris Law’s disinterestedness. The Application
 26 discloses the outstanding prepetition claim and references a “Letter Agreement” with Mr. Stolz, but
 27 does not attach the Letter Agreement or disclose that it (presumably) grants Harris Law and interest
 28 in Mr. Stolz’s real property. Accordingly, taken together, Harris Law and Mr. Harris are not

disinterested under the relevant standards for employment as professionals in these Bankruptcy Cases.

IV.

CONCLUSION

For all the foregoing reasons, Receiver respectfully requests that the Court enter an order (i) denying the Motion in its entirety and (ii) granting the Reciever such other and further relief as is just and appropriate under the circumstances.

DATED this 22nd day of December 2021.

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